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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/851,628	05/06/1997	CHARLES M. COHEN	JJJ-POI-515	6154

28120 7590 05/14/2004

ROPES & GRAY LLP  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2624

EXAMINER

ROMEO, DAVID S

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/851,628

Applicant(s)

COHEN ET AL.

Examiner

David S Romeo

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10, 12, 15-17, 24, 28, 32, 52, 53 and 56-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 12, 15-17, 24, 28, 32, 52, 53, 56-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Claims 1-4, 6-10, 12, 15-17, 24, 28, 32, 52, 53, 56-59 are pending and being examined.

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**Maintained Formal Matters, Objections, and/or Rejections:*****Double Patenting***

Claims 1-4, 6-10, 12, 15-17, 24, 28, 32, 52, 53, 56-59 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,498,142. It is acknowledged that Applicant will consider filing a terminal disclaimer upon the notification of allowable subject matter.

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***Conclusion***

The claims would be allowable upon the filing of an appropriate terminal disclaimer.

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ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS FROM THE EXAMINER SHOULD BE DIRECTED TO DAVID S. ROMEO WHOSE TELEPHONE NUMBER IS (571) 272-0890. THE EXAMINER CAN NORMALLY BE REACHED ON MONDAY THROUGH FRIDAY FROM 7:30 A.M. TO 4:00 P.M. IF ATTEMPTS TO REACH THE EXAMINER BY TELEPHONE ARE UNSUCCESSFUL, THE EXAMINER'S SUPERVISOR, GARY KUNZ, CAN BE REACHED ON (571) 272-0887.

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IF SUBMITTING OFFICIAL CORRESPONDENCE BY FAX, APPLICANTS ARE ENCOURAGED TO SUBMIT OFFICIAL CORRESPONDENCE TO THE FOLLOWING TC 1600 BEFORE AND AFTER FINAL RIGHT FAX NUMBERS:

BEFORE FINAL (703) 872-9306  
AFTER FINAL (703) 872-9307

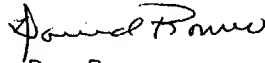
Art Unit: 1647

CUSTOMERS ARE ALSO ADVISED TO USE CERTIFICATE OF FACSIMILE PROCEDURES WHEN SUBMITTING A REPLY TO A NON-FINAL OR FINAL OFFICE ACTION BY FACSIMILE (SEE 37 CFR 1.6 AND 1.8).

FAXED DRAFT OR INFORMAL COMMUNICATIONS SHOULD BE DIRECTED TO THE EXAMINER AT (571) 273-0890.

5 ANY INQUIRY OF A GENERAL NATURE OR RELATING TO THE STATUS OF THIS APPLICATION OR PROCEEDING SHOULD BE DIRECTED TO THE GROUP RECEPTIONIST WHOSE TELEPHONE NUMBER IS (703) 308-0196.

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DAVID ROMEO  
PRIMARY EXAMINER  
ART UNIT 1647

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DSR  
MAY 13, 2004